

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF SAINT CROIX

CATHERINE SABIN,

Plaintiff

Civil No. 2002/80

v.

ST. CROIX BASIC SERVICES,
UNITED STEELWORKERS OF
AMERICA, and UNITED STEELWORKERS
OF AMERICA, LOCAL CHAPTER 8248,

Defendant.

ORDER ON PLAINTIFF'S MOTION TO COMPEL

THIS MATTER came for consideration on plaintiff's motion to compel St. Croix Basic Services [Basic] to respond to plaintiff's discovery requests. Basic filed opposition to the motion and plaintiff filed a Reply to such opposition.

Plaintiff's motion relates to interrogatories and a Demand for Production of Documents propounded on January 16, 2003. Basic served objections thereto on February 18, 2003. Basic's objections to plaintiff's interrogatories did not include any objection to the number thereof.¹ Basic's objections to plaintiff's interrogatories includes the statement that Basic will file responses to interrogatories in the near future. Basic's objections to plaintiff's demand for production includes that Basic "will file responses to interrogatories in the near future" (presumably meant to be responses to Plaintiff's Demand for Production). In any event, to date Basic has not responded to either the interrogatories or the request for production (other than the

¹See Defendant's objections to Plaintiffs' Interrogatories attached to Plaintiff's October 2, 2003, Notice of Filing pursuant to the Court's Order dated September 29, 2003.

initial objections).

In opposition to this motion Basic argues (only) that plaintiff's interrogatories exceed the numerical limitation imposed by Fed.R.Civ.P. 33(a), LRCi 33.1, and that plaintiff's request for production of documents exceeds the numerical limitation imposed by LRCi 34.1.

Regarding plaintiff's interrogatories, Fed.R.Civ.P. 33(b)(4) provides that any ground for objection not stated in a timely objection is waived unless the party's failure to object is excused for good cause. The stricture of such rule has been applied to objections to interrogatories in excess of Rule 33(a)'s limitation. *Neagle v. Electronic Data Systems Corp., et. al.*, 193 F.R.D. 94, 97 (W.D.N.Y. 2000); *In re: Joshua John Wiggins, Debtor v. Peachtree Settlement Funding*, 2000 WL 33712300 *1 (Bnkr.D.Idaho). Basic has not asserted any timely opposition to the number of Interrogatories and accordingly, the Court will impose no limit thereon.

Regarding plaintiff's demand for production, any numerical limitation arises from LRCi 34.1 which only took effect on May 23, 2003 pursuant to Order dated May 9, 2003. The general rule is that amendments to rules govern all proceedings in actions brought after they take effect, as well as all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies. *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). Thus an amendment applies to cases commenced after its enactment and, insofar as is just and practicable, to cases pending on that date. *United States v. Bowler*, 252 F.3d 741 (5th Cir. 2001).

Plaintiff's Demand for Production of Documents was propounded in January, 2003. Basic filed objections in February. Those objections did not go to the number of requests (LRCi 34.1 had not then been implemented). However, Basic did not cite any additional objection within thirty days of implementation of LRCi 34.1 on May 23, 2003. In fact, Basic's objection was only raised by its opposition to plaintiff's motion to compel which was filed and served on September 26, 2003. As provided in *Coregis Insurance Co. v. Baratta & Fenerty, Ltd.*, 187 F.R.D. 528, 529 (E.D.Pa. 1999), a party who failed to file timely objections to discovery requests waived its right to raise its objections later. Moreover, Basic has not established good cause for its delay. Accordingly, the Court need not address the issue of whether LRCi 34.1 would otherwise be applicable hereto.

Personnel Information

In determining appropriate discovery to be allowed from personnel files, the Court must weigh Plaintiff's right to relevant discovery against the privacy interest of such non-parties. On balance, it appears that the extent of discovery allowed must be tailored to the particular allegations at issue. *Dorchy v. Washington Metropolitan Area Transit Authority*, 45 F.Supp.2d 5, 15 (D.D.C. 1999); *Onwuke v. Federal Express Corp., et.al.*, 178 F.R.D. 508, 517-18 (D.Minn/ 1997). "We think the proper balance between privacy interests of non-party third persons and the discovery interests of a party litigant is to assure that only those portions of the pertinent personnel files, which are clearly relevant to the parties' claims are open to disclosure and then subject to an appropriate Confidentiality Order as the circumstances require." *See also, Northern v. City of Philadelphia*, 2000 WL 35526 *3 (E.D.Pa. 2000). "Although personnel files

are discoverable, they contain confidential information and discovery of them should be limited.” *Miles v. Boeing*, 154 F.R.D. 112, 115 (E.D.Pa. 1994).

Defenses

The parties are entitled to know the factual basis of the claim, defenses, or denials of their opponents. Fed.R.Civ.P. 26(b)(1). *See, Audio Text Communication Network, Inc. v. Telecom, Inc.*, 1995 WL 625963 (D.Kan.); *Lance, Inc. v. Ginsburg*, 32 F.R.D. 51, 53 (E.D.Pa. 1962). Regarding affirmative defenses, defendant must respond to interrogatories by stating all facts currently known to defendant as requested by Plaintiff. The Court does not require defendant to provide such information with regard to the ultimate determination for the Court as to whether defendant was negligent. To do so would require defendant to aver all facts demonstrating the negative proposition of plaintiff’s non-claim. Defendant also need not respond to any interrogatory concerning an affirmative defense based solely upon a legal proposition.

In this matter, Plaintiff’s First Amended Complaint alleges in significant part that:

- (1) In May 2000 plaintiff was employed at Basic as a scaffold builder helper. (Para. 9);
- (2) In October 2000 plaintiff was transferred to the position of insulation helper (Para. 15);
- (3) (At an indeterminate time) plaintiff was transferred back to the turnaround area to break down scaffolding (Para. 30);
- (4) On June 13, 2001 plaintiff was transferred to the turnaround projects (Para. 44);
- (5) Plaintiff suffered instances of sexual harassment at work (Paras. 20-25, 27-28, 31-

50);

- (6) On December 12, 2001, plaintiff was laid off. Plaintiff alleges that the reason therefor was in retaliation for her complaints of discrimination and sexual harassment (Paras. 58-59);
- (7) Plaintiff had continually requested that she be allowed to take the craft test to qualify as a scaffold builder but was denied such opportunity (Paras. 12-14, 16-20, 29-31);
- (8) Plaintiff ultimately took some tests on November 14, 2001 and December 5, 2001, but claimed discrimination with regard thereto (Paras. 51-56).
- (9) Plaintiff alleges her belief that she was discriminated against in pay, benefits, promotions and job assignments as “a result of illegal sex, race, and national origin discrimination and in retaliation of her complaints as a result thereof.” Plaintiff also alleges that she was denied (unstated) positions which she was qualified for as a result of illegal discrimination (Paras. 60-61).

Upon consideration of plaintiff’s discovery requests and Basic’s objections to such request and all pleadings herein, it is ORDERED AS FOLLOWS:

1. All responses required by this Order shall be provided to plaintiff within twenty (20) days of date of this Order. The parties shall promptly execute any confidentiality agreement requested (in standard form).
2. Re: Interrogatories Nos. 1-5, 9
Basic shall fully respond as requested (no objections raised).

3. Re: Interrogatories Nos. 6 & 8

Basic shall fully respond as requested to parts (a), (b), (d), and (j) limited to the period from May 1, 2000 to December 21, 2001.

4. Re: Interrogatory No. 7

Basic shall fully respond as requested to parts (a), (b), (d), (e), (f), (g) limited to the period from November 1, 2000, to December 21, 2001.

5. Re: Interrogatory No. 10

Basic shall respond as requested. To the extent Basic denies that there was a “failing to test,” “delay in the testing”, and “providing limited testing” Basic may provide a narrative explanation of its version of plaintiff’s “testing” history.

6. Re: Interrogatory No. 11

Basic shall respond as requested limited to the period from May 1, 2000 to June 30, 2002. Basic need not provide any information concerning “experience, qualifications” (overbroad).

7. Re: Interrogatories Nos. 12-15

Basic shall respond as requested limited to matters concerning any instances of sexual harassment and/or sexual discrimination.

8. Re: Interrogatory No. 16

Plaintiff’s motion is denied.

9. Re: Interrogatories Nos. 17-18

Interrogatories Nos. 17-18 were not included within the documents attached to

plaintiff's October 2, 2003 Notice of Filing. Basic raised no particular objection thereto and the Court cannot determine whether Basic's general objections regarding time span have any applicability hereto. Accordingly, to the extent Basic does not have any such general objection it shall fully respond to such interrogatories. If Basic has such objection the parties shall meet and confer in such regard in consideration of the matters otherwise ordered herein. If unable to agree plaintiff shall note such disagreement and file a copy of such interrogatories with the court.

10. Re: Interrogatories Nos. 19-25

Interrogatories 19-25 were not included within the documents attached to plaintiff's October 2, 2003 notice of filing. From Basic's objections it is apparent that such interrogatories relate to some of Basic's affirmative defenses. Further to the discussions above, Basic shall respond to such interrogatories to the extent Basic has any current knowledge of the factual bases for such affirmative defenses. To the extent basic currently lacks any such knowledge it may so aver. Basic need not respond to any affirmative defense based solely upon a legal proposition.

11. Re: Demand for Production No. 1

Plaintiff's motion is denied.

12. Re: Demand for Production Nos. 2-5

Basic shall produce all documents limited to matters concerning any instances of

sexual harassment and/or sexual discrimination.

13. Re: Demand for Production No. 6

Basic shall produce all documents regarding the particular matters listed as “including but not limited to”.

14. Re: Demand for Production Nos. 7 & 8

Basic shall produce documents relevant to matters provided in No. 3 above (regarding interrogatories 6 & 8) limited to the period from May 1, 2000 to December 21, 2001.

15. Re: Demand for Production No. 9

Basic shall produce documents relevant to matters provided in No. 4 above (regarding interrogatory no. 7) limited to the period from November 1, 2000 to December 21, 2001.

16. Re: Demand for Production No. 10, 12, 13, 15, 16, 18, 26, 28, 37-39

Plaintiff’s motion is denied.

17. Re: Demand for Production Nos. 11, 14, 16

Basic shall produce the requested documents limited to the period from May 1, 2000 to December 21, 2001.

18. Re: Demand for Production No. 17

Basic shall produce the requested documents limited to the period from November 1, 2000 to December 21, 2001.

19. Re: Demand for Production Nos. 19-21, 29, 32-36, 42, 48, 51-53

Basic shall produce the requested documents.

20. Re: Demand for Production Nos. 22-25

Basic shall produce the requested documents limited to matters concerning any instances of sexual harassment and/or discrimination.

21. Re: Demand for Production No. 27

Basic shall produce the requested documents limited to the period from November 1, 2000 to December 21, 2001.

22. Re: Demand for Production No. 30

Basic shall produce documents consistent with No. 6, above (Re: Interrogatory No. 11) and limited to the period from May 1, 2000 to June 30, 2002.

23. Re: Demand for Production No. 31

Basic shall produce documents referring or relating to allowance of plaintiff to take the subject test, tests actually given to plaintiff and the results thereof.

24. Re: Demand for Production No. 40

Basic shall produce the requested documents limited to the period from November 1, 2000 to December 21, 2001.

25. Re: Demand for Production No. 41

Basic shall produce the requested documents limited to any analysis concerning the positions of scaffold builder helper, insulation helper and scaffold builder for the period from May 1, 2000 to December 21, 2001.

26. Re: Demand for Production Nos. 43-47

Basic shall produce the requested documents limited to the period from May 1, 2000 to December 21, 2001.

27. Re: Demand for Production Nos. 49-50

Basic shall produce the requested documents limited to any matters concerning sexual harassment, sexual discrimination, any discrepancy in pay, benefits and/or promotions concerning persons employed as scaffold builder helper and/or insulation helper during the period from May 1, 2000 to December 21, 2001.

28. Re: Demand for Production No. 54

Basic shall produce the requested documents limited to plaintiff's claims as stated in her complaint.

29. Re: Demand for Production Nos. 55, 60, 64, 67

Plaintiff's motion is denied.

30. Re: Demand for Production Nos. 56-59, 61-63, 65-66

Basic shall produce the requested documents (See No. 10, above re: interrogatories concerning affirmative defenses).

Dated: October 6, 2003

ENTER:

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:

Wilfredo F. Morales, Clerk of Court

by: _____
Deputy Clerk

Sabin v. St. Croix Basic, et. al.
Civ. No. 2002/80
Order
Page 11

cc: Lee J. Rohn, Esq.
Richard Daley, Esq.
Michael Sanford, Esq.